

Tax Type: Property Tax
Issue: Charitable Ownership/Use

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket # 06-PT-0008
v.)	PIN 20-08-133-005-0060
)	Tax Year 2005
MASON CITY COMMUNITY)	
DAYCARE, INC.)	Dept. Docket # 05-63-9
Taxpayer)	

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois.¹

This case concerns whether a parcel of property that is located in Mason County and owned by Mason City Community Daycare, Inc. (hereinafter “applicant”) is exempt from taxes for the year 2005. The applicant alleges that the property qualifies for an exemption under section 15-65 of the Property Tax Code (35 ILCS 200/1-1 *et seq.*) on the basis that it is owned by a charitable organization and used exclusively for charitable purposes. The Department of Revenue (hereinafter “Department”) contends that the

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applicant has not met either the ownership or the use requirement for the charitable exemption. The applicant timely protested the Department's decision to deny the exemption, and an evidentiary hearing was held. For the following reasons, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The applicant is an Illinois not-for-profit corporation that was incorporated in May 2005. It operates a full service day care known as Little Cougars Daycare Center that offers quality care for children ranging in age from 6 weeks to 12 years. (Dept. Ex. #1; App. Ex. #1)
2. The Articles of Incorporation state that the applicant was organized exclusively for charitable and educational purposes. (Dept. Ex. #1)
3. The applicant acquired the property on July 12, 2005. (Dept. Ex. #1)
4. The State of Illinois Department of Children and Family Services (hereinafter "DCFS") has issued a license to the applicant for its day care facility. The maximum number of children that the applicant can serve under the DCFS license is 98. (App. Ex. #7)
5. The applicant currently has 77 children, and a waiting list does not exist for enrolling a child in the day care. (Tr. p. 11)
6. Parents who are interested in enrolling a child must first complete an initial application form. Once the parents complete the paperwork, which includes immunization records, the child is enrolled in the day care. (App. Ex. #1; Tr. p. 10)

7. The applicant is open Monday through Friday from 6:00 a.m. to 6:00 p.m. The applicant serves a breakfast, lunch, morning snack, and afternoon snack every day of operation. (App. Ex. #1)
8. For children with ages from 6 weeks to 15 months, the weekly tuition is \$127. For children with ages from 15 months to 2 years, the tuition is \$125. The tuition continues to slightly decrease for the older children. (Tr. pp. 11-12)
9. The applicant's Parent Handbook states that the fee for each child must be paid in advance, either by the week or by the month. Weekly fees are due on Monday, and monthly fees are due on the first Monday of the month. Parents are subject to a late fee of \$5 if payment is not received by 6:00 p.m. Friday evening. (App. Ex. #1)
10. If payment becomes two weeks delinquent, the applicant reserves the right to not allow the child to attend the Center. Parents are notified one week prior to the final day that service will end. (App. Ex. #1)
11. Unless prior arrangements have been made with the director, all children must be picked up upon the closing time of 6:00 p.m. The parent or guardian must pay a late pick-up fee of \$1 for every minute the child is left at the center after closing. (App. Ex. #1)
12. The handbook states, "You will be responsible for all payments due. If you fail to clear your account within thirty days, your account will be sent for collection. You will be responsible for all legal fees necessary to collect said payment." (App. Ex. #1)

13. A charge of \$20 plus a late payment charge of \$5 is assessed for the handling and processing of any returned checks. If more than one check is returned, only cash will be accepted for future payments. (App. Ex. #1)
14. Each family that attends full-time receives 5 days per year to be used as vacation time, and there is no charge for that week. If a child does not attend for any other day (e.g., illness or visiting a friend), the parent is still charged. (App. Ex. #1)
15. The applicant participates in the U. S. Department of Agriculture's federally subsidized food program. To participate in this program, the applicant must keep on file family enrollment forms and income verification. The reimbursements are received directly by the applicant. (App. Ex. #1)
16. Community Childcare Connection ("CCC") is an organization affiliated with the Department of Human Resources that provides assistance with childcare payments. Families must complete an application that includes proof of their income. If a family is approved, they must pay a co-pay. (Tr. pp. 16-17)
17. The applicant's charitable policy that was in effect at the time it was incorporated stated "if a family qualifies for CCC and they have an additional co-pay we will give them a 50% discount on the additional co-pay." (Dept. Ex. #1, p. 32)
18. On April 11, 2006, the applicant amended its charitable policy and added the following sentence: "If the family cannot afford the 50% we may waive the full amount of the co-pay with proper documentation indicating they cannot afford such co-pay. Documentation will include proof of income and expenses." (App. Ex. #2)

19. Approximately 33 to 35 of the 77 children who are enrolled in the day care are receiving assistance from either CCC or DCFS. (Tr. p. 14)
20. The applicant advertised in the local newspaper and at fundraisers, which included a booth at a carnival. The applicant also provided fliers at the schools when the children registered for school and advertised through word-of-mouth. (Tr. pp. 19-20)
21. The applicant's advertisements do not indicate that there is a tuition waiver policy. (Tr. p. 21)
22. The applicant's un-audited profit and loss statement for January through December 2005 includes the following income and expenses:

Income

CCC-DCFS Income	55,117.23
Food Reimbursement	12,637.06
Grants & Donations	200.00
Income Receipts – Private Pay	58,284.40
Miscellaneous Income	<u>133.00</u>
Total Income	\$126,371.69

Expenses

Advertising	38.98
Attorney fees	2,653.60
Auto Expenses	617.11
Automation Supplies & Expenses	107.70
Dues & Subscriptions	80.25
Food Expenses	14,744.37
Insurance	5,360.89
Interest	2,791.72
Janitorial Supplies & Expense	406.01
Leased Equipment & Maintenance	1,192.48
Licenses, Fees & Permits	237.00
Maintenance & Repairs	1,905.29
Office Supplies & Expenses	521.83
Operating Supplies and Expenses	1,430.78
Payroll	90,916.99

Postage	88.29
Recreation & Entertainment	112.00
Utilities	<u>4,662.60</u>
Total Expenses	\$127,867.89

Net income (loss) (\$1,496.20) (Dept. Ex. #1, p. 35)

23. The applicant is exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code. (App. Ex. #9)

CONCLUSIONS OF LAW:

Article IX, section 6 of the Illinois Constitution of 1970 authorizes the General Assembly to grant property tax exemptions in limited circumstances and provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to this constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code, which allows exemptions for charitable purposes and provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) Institutions of public charity. * * *. (35 ILCS 200/15-65(a)).

Property may therefore be exempt under this section if it is (1) owned by an entity that is an institution of public charity, and (2) actually and exclusively used for charitable purposes. *Id.*; Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263, 270 (1996); Methodist Old People's Home v. Korzen, 39 Ill. 2d 149, 156-157 (1968). Whether property is actually and exclusively used for charitable purposes

depends on the primary use of the property. Methodist Old Peoples Home at 156-57. If the primary use of the property is charitable, then the property is “exclusively used” for charitable purposes. Cook County Masonic Temple Association v. Department of Revenue, 104 Ill. App. 3d 658, 661 (1st Dist. 1982).

In Methodist Old Peoples Home, the Supreme Court provided the following guidelines for determining charitable ownership and use: (1) whether the benefits derived are for an indefinite number of people, persuading them to an educational or religious conviction, for their general welfare or in some way reducing the burdens of government; (2) whether the organization has no capital, capital stock or shareholders, earns no profits or dividends, but rather derives its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in its charter; (3) whether the organization dispenses charity to all who need and apply for it, does not provide gain or profit in a private sense to any person connected with it, and does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses; and (4) whether the primary purpose for which the property is used, not any secondary or incidental purpose, is charitable. Methodist Old Peoples Home, 39 Ill. 2d at 156-57. These factors are used to determine whether property meets the constitutional standards for a charitable purposes exemption. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 290-291 (2004). They are to be balanced with an overall focus on whether and how the organization and use of the property serve the public interest and lessen the State’s burden. See DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 468-469 (2nd Dist. 1995).

It is well-established that property tax exemption provisions are strictly construed in favor of taxation. People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450, 462 (1970). The party claiming the exemption has the burden of proving by clear and convincing evidence that it is entitled to the exemption, and all doubts are resolved in favor of taxation. *Id.*; City of Chicago v. Department of Revenue, 147 Ill. 2d 484, 491 (1992); Evangelical Hospitals Corporation v. Department of Revenue, 223 Ill. App. 3d 225, 231 (2nd Dist. 1992).

The evidence in this case raises doubts as to whether the applicant is organized and used for charitable purposes. The applicant's charitable policy during 2005 allowed a family that qualified for CCC to have a 50% discount on their co-pay. The policy did not allow for a full waiver of the co-pay until 2006. Because the applicant did not have a full-waiver policy during the year in question, it is difficult to conclude that the applicant provided charity to those who were unable to pay for the applicant's services. In addition, neither the 2005 policy nor the 2006 policy were included in the Parent Handbook, and there was no indication that families were aware of the charitable policy. The applicant did not advertise its policy. Although public notice of a fee-waiver policy is not an indispensable fact for a charitable tax exemption (see Randolph Street Gallery v. Zehnder, 315 Ill. App. 3d 1060, 1068 (1st Dist. 2000)), it is still relevant that the applicant did not have a full fee-waiver policy during 2005, and the policy it did have was not advertised.

The late fees that the applicant charges are indicative of a profit motive rather than a charitable one. The applicant charges a fee for the late payment of tuition and for failing to timely pick-up a child. If a family fails to make a payment for two weeks, the

applicant may terminate the child's enrollment. The applicant charges tuition regardless of attendance (except for 5 days per year to be used as vacation time). There is no indication that the late fees are ever waived. These penalties suggest a business-like operation and support the finding that the primary use of the property is not charitable.

The applicant provided some examples of its billing statements that it claims were charitable write-offs, but it is not clear that the write-offs should be considered to be charity. One statement is for a family with three children, and it shows that on December 7, 2004, the applicant credited their account for \$4,575. The comment section on the statement indicates "charitable policy approved." (App. Ex. #4) This statement also includes the word "Collections" at the top. Another statement for a family with four children shows that on October 20, 2005 the applicant wrote-off \$551.80, again indicating "charitable policy approved." (App. Ex. #5) After that write-off, the family continued to make payments. (App. Ex. #6) The statement for the subsequent payments shows only two children in day care, rather than four.

The circumstances surrounding these write-offs were not explained. Because the word "Collections" is at the top of the first statement, it appears as though the account may have been sent to some type of collection agency before the applicant decided to credit the account. As for the second statement, because the applicant continued to receive subsequent payments from this family, it is not clear whether this family qualified for charity or whether this was simply a one-time write-off of an amount that could not be collected. Writing off a bad debt is not the same as providing charity. Alivio Medical Center v. Department of Revenue, 299 Ill. App. 3d 647, 652 (1st Dist. 1998).

In addition, the majority of the applicant's revenue is derived from its fees for services rather than public or private donations. The applicant does not resort to fundraising to cover its expenses. Furthermore, although a substantial amount of this organization's income is from CCC or DCFS, it is unclear whether the applicant entered into contractual arrangements with these organizations in order to subsidize the low-income families. One court has found that contractual arrangements with Medicare, Medicaid, and private insurers were not charity. See Riverside Medical Center v. Department of Revenue, 342 Ill. App. 3d 603, 610 (3rd Dist. 2003) (discounted care provided to patients through contracts with Medicare, Medicaid and private insurance is not charitable).

As previously mentioned, exemption provisions are strictly construed, and all doubts must be resolved in favor of taxation. City of Chicago, *supra*. The facts in the present case suggest that the organization is operated primarily to provide services for payment rather than to provide charity. The primary source of the applicant's income is fees for services, the charitable policy during the year in question did not allow for a full waiver of fees, penalties are imposed for failing to timely pay or pick up a child, and the amounts that the applicant claims were charitable write-offs appear to have been uncollectible debts rather than charity. These facts support a finding that the fundamental nature of the applicant's operation is not a charitable one.

Recommendation:

For the foregoing reasons, it is recommended that the property does not qualify for a charitable exemption for the year 2005.

Linda Olivero
Administrative Law Judge

Enter: January 19, 2007